IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JUNE
TWO THOUSAND AND SEVEN

PRESENT
THE HON'BLE SRI JUSTICE BILAL NAZKI
and
THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.12711 of 2007

Between:

Shree Jagannath Swamy Ramgopal Trust,
Rep. by its Founder Family Trustee,
Sri Ramesh Chandra Malani.

..... PETITIONER

and

Municipal Corporation of Vijayawada,
Rep. by its Commissioner, Vijayawada,
Krishna District.

.....RESPONDENT

The Hon'ble Sri Justice Bilal Nazki
and
The Hon'ble Sri Justice S.Ananda Reddy

Writ Petition No.12711 of 2007

Order: *(per the Hon'ble Sri Justice Bilal Nazki)*

Heard the learned Counsel for the parties. With their consent, the Writ Petition is being disposed of at this stage.

The grievance of the petitioner-trust is that it is running a charitable choultry for the purpose of providing

accommodation to the pilgrims, therefore, it is not liable to pay any property tax in terms of Section 202 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act'), but

in spite of that, the impugned notices have been issued by the respondent charging and demanding tax from the petitioner.

The learned Counsel for the petitioner relies on Section 202 sub-section 1 (b) of the Act. Section 202 of the Act lays down that,

> 'The general tax shall be levied in respect of all buildings and lands in the city'.

However, certain exceptions have been given and one of the exception mentioned in sub-section (b) of Section 202 (1) of the Act is,

> 'buildings and lands or portion thereof solely occupied and used for public worship or for a charitable purpose'.

The contention of the learned Counsel for the petitioner is that the shops used by the choultry are part of the choultry itself and therefore, they are exempt from payment of any tax under Section 202(1)(b) of the Act. In this connection, he relied on a judgment of the Supreme Court reported in ***Municipal Council, Tirupathi vs. Tirumalai Tirupathi Devasthanam***[1]. Basically, the question before the Supreme Court in the judgment cited supra was as to what is meant by '*Choultry.'* The term

'*Choultry'* was defined by the Supreme Court in the light of the law pertaining to the State of Tamilnadu. There was no provision like sub-section 2 of Section 202 of the Act, which fell for consideration of the Supreme Court in the judgment cited supra. Sub-section 2 of Section 202 of the Act lays down as under:

> 'The following buildings and lands or portions thereof shall not be deemed to be solely occupied and used for public worship or for a charitable or educational purposes within the meaning of clause (b) of sub-section (1), namely:-
> (a) buildings or lands or portions thereof in which any trade or business is carried on: and
> (b) buildings or lands or portions thereof in respect of which rent is derived, whether such rent is or is not applied solely to religious or charitable or educational purposes].

On conjoint reading of Section 202(1)(b) along with Section 202(2)(a) and (b) of the Act, there remains no doubt that although the buildings or lands or portion thereof, in which any trade or business is carried, are part of building or land which is used for public worship or for charitable purpose, they are not exempt from tax. It is only those portions, which are meant solely for the purpose of public worship or for charitable purpose, that are exempt from tax. Admittedly, the petitioners are using the shops, for which a demand has been raised, for trade or business.

Therefore, we do not find any merit in this Writ Petition, which is, accordingly, dismissed. No costs.

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(Bilal Nazki, J)

19th June, 2007

(S.Ananda Reddy, J)

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[1] **AIR 1974 SC 521 (V 61 C 100)**